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7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2010-621

11 **CHERRISH ANNE GILMAN**
12 1828 E. 2nd St.
13 Long Beach, CA 90802
Registered Nurse License No. 702560

ACCUSATION

14 Respondent.

15
16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
20 of Consumer Affairs (Board).

21 2. On or about April 25, 2007, the Board of Registered Nursing issued Registered Nurse
22 License Number 702560 to Cherrish Anne Gilman (Respondent). The Registered Nurse License
23 was in full force and effect at all times relevant to the charges brought herein and will expire on
24 November 30, 2010, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code (Code) unless otherwise
28 indicated.

STATUTORY PROVISIONS

4. Section 2750 of Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct....

....

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

7. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

"(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in

subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof."

8. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

REGULATORY PROVISION

9. California Code of Regulations, title 16, section 1444 states, in pertinent part:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. . . ."

COST RECOVERY

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime)

11. Respondent is subject to disciplinary action under Code sections 490 and 2761, subdivision (f), in conjunction with California Code of Regulations, title 16, section 1444, in that Respondent was convicted of a crime substantially related to the functions or duties of a registered nurse which to a substantial degree evidences her present or potential unfitness to practice as a registered nurse in a manner consistent with the public health, safety, or welfare. The circumstances of the conviction are as follows:

a. On or about November 13, 2009, pursuant to a nolo contendere plea, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152(b) [driving with > 0.08% BAC] in the criminal proceeding entitled *The People of the State of California v. Cherrish*

1 *Anne Gilman* (Super. Ct. Los Angeles County, Case No. 9LT01882.) The Court placed
2 Respondent on three (3) years of summary probation, among other conditions. The circumstances
3 of the conviction are that on or about October 18, 2009, Respondent was involved in a traffic
4 collision with another vehicle. Respondent admitted to the police officer that she had two shots
5 of Jack Daniels prior to driving.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Alcohol-Related Conviction)**

8 12. Respondent is subject to disciplinary action under Code sections 2761,
9 subdivision (a), and 2762, subdivision (c), on the grounds of unprofessional conduct, in that
10 Respondent was convicted of a criminal offense involving the consumption of alcohol.
11 Complainant refers to and by this reference incorporates the allegations set forth above in
12 paragraph 11 inclusive, as though set forth fully.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Dangerous Use of Alcoholic Beverages)**

15 13. Respondent is subject to disciplinary action under Code sections 2761,
16 subdivision (a), and 2762, subdivision (b), on the grounds of unprofessional conduct, in that
17 Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to herself
18 and others and / or to the extent that such use impairs her ability to conduct with safety to the
19 public the practice authorized by her license. Complainant refers to and by this reference
20 incorporates the allegations set forth above in paragraph 11 inclusive, as though set forth fully.

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Board of Registered Nursing issue a decision:

24 1. Revoking or suspending Registered Nurse License Number 702560, issued to
25 Cherrish Anne Gilman;

26 2. Ordering Cherrish Anne Gilman to pay the Board of Registered Nursing the
27 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
28 Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED:

6/2/10

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN

Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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